



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 1000
WASHINGTON, DC 20374-5065

IN REPLY REFER TO
ACQ 021
27 Nov 01

MEMORANDUM FOR DISTRIBUTION

Subj: **IMPROPER ADJUSTMENTS TO CANCELLED DEPARTMENT OF DEFENSE
APPROPRIATIONS (01-27)**

Encl: (1) ASN RD&A memo of 29 Oct 01
(2) OUSD memo of 01 Oct 01
(3) NAVFAC memo 23 Aug 96
(4) NAVFAC memo 4 Apr 96

1. Enclosures (1) and (2) are forwarded for your information and immediate implementation as appropriate.

2. NAVFACENGCOM has existing funds administration policy for contract modifications which requires Contracting Officers to assure all requirements of law and procedure are followed before executing contract modifications. Current policy and procedures require Contracting Officers to seek advice from their Comptrollers and Counsel concerning the use of appropriate funding for a particular modification.

3. Modifications to expired appropriations seldom occur within NAVFACENGCOM. However, should these arise, the Contracting Officer must prepare a written determination justifying the proposed action and obtain level above contracting office, Counsel, and NAVFAC HQ Comptroller review and approval before execution of the proposed action. Enclosures (3) and (4) are existing NAVFACENGCOM policy memorandums provided for your information.

A handwritten signature in black ink, appearing to read "Michael F. Howard", is located below the text of the memorandum.

MICHAEL F. HOWARD
By direction



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20380-1000

OCT 29 2001

MEMORANDUM FOR DISTRIBUTION

Subj: IMPROPER ADJUSTMENTS TO CANCELLED DEPARTMENT OF DEFENSE
APPROPRIATIONS

Encl: (1) USD(AT&L) memo of October 1, 2001

In light of the General Accounting Office comments noted in enclosure (1), you are requested to provide a brief description of the procedures that you currently have in place to ensure no contract modifications are issued resulting in improper adjustments to contract payment terms. If no procedures are in place, please develop a plan to implement procedures and provide a brief description of the procedures to be put in place with a schedule showing when these procedures will be in place. The plan should address the actions to be taken until such time as the procedures are in place to ensure that no modifications are issued in the interim that would cause improper adjustments to contract payment terms. Responses should be submitted by close of business November 16, 2001.

Questions or comments may be addressed to Ronald G. Ostrom
(703) 602-2798, fax (703) 602-2117, or email
(ostrom.ronald@hq.navy.mil).

A handwritten signature in dark ink, appearing to read "M. E. Agard".

Executive Director
Acquisition and Business Management

Distribution:
(See next page)

Enclosure (1)

Subj: IMPROPER ADJUSTMENTS TO CANCELLED DEPARTMENT OF DEFENSE
APPROPRIATIONS

Distribution:

CMC (DC, I&L)

CNR

COMMARCORMATCOM

COMNAVAIRSYSCOM

COMNAVFACENGCOM

COMNAVICP

COMNAVSEASYSYSCOM

COMNAVSUPSYSCOM

COMSC

COMSPAWARSYSCOM

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ASN(FM&C)

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ONR (02)

SPAWARSYSCOM (02)

SSP (SPN)

MARCORSYSCOM (CT)

ABM Home Page

Enclosure (1)

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

01 OCT 2001

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTENTION: SERVICE ACQUISITION EXECUTIVES
DIRECTORS OF THE DEFENSE AGENCIESSUBJECT: Improper Adjustments to Cancelled Department of Defense
Appropriations

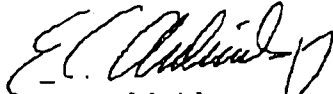
The General Accounting Office (GAO) criticized DoD for a lack of adequate systems, internal controls, and managerial attention to ensure that adjustments affecting closed appropriations are legal and otherwise proper. GAO auditors asserted that the Military Departments used contract modifications to instruct the Defense Finance and Accounting Service to charge some payments to closed appropriations. The GAO further indicated that documentation supporting these adjustments did not adequately explain the underlying reasons for the adjustments. Because of these criticisms, the GAO recommends that I, as the Under Secretary of Defense (Acquisition, Technology, and Logistics) issue policy guidance prohibiting contract modifications resulting in improper adjustments to contract payment terms. Additionally, the Under Secretary of Defense (Comptroller) requests that the acquisition community take appropriate action to prevent improper adjustments.

Accordingly, I request that you make certain that all contracting activities have procedures in place that ensure compliance with the requirements of the Department's financial management policies, which currently preclude the improper adjustments identified by the GAO. Instructions for charging and processing adjustments to closed appropriation accounts are included in Volume 3, Chapter 10 of the Department of Defense Financial Management Regulation (DoD 7000.14-R). All contract modifications that include adjustments to closed appropriation accounts must be supported with contract file documentation sufficient to establish that the adjustments are legal and proper, and that they received supervisory review. The modifications must also be approved in writing by the appropriate level comptroller or financial resource manager.



Enclosure (2)

Actions taken to comply with this direction must be completed within 60 days from the date of this memorandum. Any questions should be addressed to Mr. Richard Brown in Defense Procurement at (703)695-7197, or Richard.G.Brown@osd.mil.



E. C. Aldridge, Jr.



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA VA 22332 2300

Policy

IN REPLY REFER TO

4200
Ser 111B/96-163
23 AUG 96

From: Commander, Naval Facilities Engineering Command
To: Commander, Atlantic Division, Naval Facilities
Engineering Command
Commanding Officer, Southern Division, Naval
Facilities Engineering Command

Subj: FUNDS ADMINISTRATION POLICY FOR CONTRACT
MODIFICATIONS (36-96)

Encl: (1) DOD Comptroller memo of 20 Apr 92

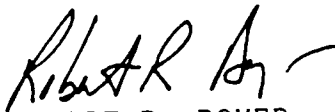
1. The Chief Financial Officers Act of 1990 established Agency Chief Financial Officers (CFOs) for a number of agencies, including the Department of Defense. Agency CFOs are required to oversee all financial management activities relating to the programs and operations of the agency. The CFO has ultimate responsibility for policies and procedures associated with fiscal matters.
2. The Contracting Officers are responsible for assuring that all requirements of law and procedure are followed. The Contracting Officer determines whether a modification is within the contract scope based on all governing factors. If a modification is not within the contract scope, there is a need for a determination under FAR Part 6, Competition in Contracting Act (CICA), and the authority for the modification is a supplemental agreement, not the Changes Clause nor any other contract clause. When the modification is within the contract scope, it is issued pursuant to the Changes Clause or another contract clause, such as Differing Site Conditions, Option, etc. However, the Contracting Officer should seek advice from the Comptroller and Counsel concerning appropriate funding of a particular modification.
3. There may be a difference between contract scope and fiscal scope, and this difference in definitions has caused confusion. For example, when a contract funded with annual funds has an option for a second year, the modification exercising the option at the beginning of the fiscal year is within contract scope; however, this option is not

Enclosure (3)

Subj: FUNDS ADMINISTRATION POLICY FOR CONTRACT
MODIFICATIONS (36-96)

considered to be "fiscally in-scope" and requires new
current year annual funds.

4. Enclosure (1), which contains a matrix summary
representing a generalization of more specific guidance
contained in Chapter 25 of the DOD Accounting Manual, is
provided for your information.


ROBERT R. BOYER
Director, Contracts

Distribution:

COMPACNAVFACENGCOM (00, 02)
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CO SOUTHWESTNAVFACENGCOM (00, 02)
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CO NORTHNAVFACENGCOM (00, 02)
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CO PWC YOKOSUKA (00, 200)
CO PWC WASHINGTON (00, 200)

EMR TEAM

CO, CIVIL ENGINEER CORPS OFFICERS SCHOOL
NAVAL FACILITIES CONTRACTS TRAINING CENTER
NAVAL FACILITIES CONTRACT OFFICE, PORT HUENEME (27)

Enclosure (3)



OFFICE OF THE COMPTROLLER OF THE DEPARTMENT OF DEFENSE

WASHINGTON, DC 20301-1100

APR 20 1992


MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (ACQUISITION)
ASSISTANT SECRETARY OF DEFENSE (PRODUCTION AND
LOGISTICS)
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL
MANAGEMENT)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL
MANAGEMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL
MANAGEMENT AND COMPTROLLER)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTOR, WASHINGTON HEADQUARTERS SERVICES

SUBJECT: DoD Accounting Guidance for Contract Changes

In a separate memorandum, updated guidance was recently provided regarding whether to charge expired or current funds for contract changes.

Essentially that guidance indicated that DoD Components should follow the provisions of Chapter 25 of the DoD Accounting Manual. Attached, for your convenience, is a matrix which summarizes the provisions of Chapter 25. The matrix is only a summary and represents a generalization of more specific guidance contained in Chapter 25. As such, the guidance should not be used as a sole source of reference by itself. Rather, it should be used in conjunction with all other applicable guidance regarding the use of current, expired, and canceled accounts.

Questions on the attached matrix may be directed to the Director for Accounting Policy, Mr. Nelson Toye, or to Ms. Susan Williams of his staff. Mr. Toye may be reached at (703) 695-7000 (DSN 225-7000). Ms. Williams may be reached at (703) 697-3193 (DSN 227-3193).


Alvin Tucker
Deputy Comptroller
(Management Systems)

Attachment

FUNDING POLICY FOR CONTRACT CHANGES

Type of Change (After Funds Have Expired for New Obligations)	Funding Source	Report Required to be Submitted to DoD Comptroller (If Change Exceeds \$4 Million); or to Congress (If Change Exceeds \$25 Million)
Incentive, Award Fees, and Target-to-Ceiling Cost Growth on Incentive Fee Contracts	Expired Funds, M Account	No
Price Inflation (Escalation or Economic Price Adjustments)	Expired Funds, M Account	No
② Within-Scope Contract Changes to Include:		
a. Within-scope contract amendments	Expired Funds, M Account	Yes
b. Within-scope error corrections or formalization of an informal agreement that do not result in a new procurement	Expired Funds, M Account	Yes
c. Within-scope claims and settlements	Expired Funds, M Account	Yes
③ Change-in-Scope (Out-of-Scope) Contract Changes to Include:		
a. Increases in quantities	Current Year Funds	No
b. Increases in required levels of service performance	Current Year Funds	No
c. Change-in-scope claims and settlements	Current Year Funds	No
③ Contract Defaults Resulting in Reprocurement Contract Actions	Expired Funds, M Account	Yes
Billing for Work Performed before Fund Expiration. (If work is performed--i.e., an obligation is incurred--but not documented before funds expire, expired funds are the proper funding source.)	Expired Funds, M Account	Yes
Amounts Which Would Otherwise be Chargeable to a Canceled Account Were It Not Canceled. (Subject to lesser of 1% of current year funds or the unexpended balance of the original appropriation.)	Current Year Funds	No



DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

Ser: 9231

04 APR 1996

From: Commander, Naval Facilities Engineering Command

Subj: GUIDANCE ON THE ADMINISTRATION OF APPROPRIATIONS
AFTER THE PERIOD OF AVAILABILITY

Ref: (a) COMNAVFACENGCOM Ltr Ser 8161 of 25 Oct 1991
(b) COMNAVFACENGCOM Ltr Ser 8281 of 23 Apr 1992
(c) COMNAVFACENGCOM Ltr Ser 8378 of 13 Aug 1992
(d) COMNAVFACENGCOM Ltr Ser 8401 of 22 Sep 1992
(e) COMNAVFACENGCOM Ltr Ser 8559 of 02 Apr 1993
(f) COMNAVFACENGCOM Ltr Ser 8503 of 26 Jan 1993

Encl: (1) Matrix on Upward Obligation Adjustments
(2) Format for Requesting Funds for Upward Obligation Adjustments
(3) FY 1996 Appropriation Matrix--Available, Expired, Canceled

1. As part of the Navy's initiative to streamline financial management, changes have taken place regarding the **approval authority thresholds for upward obligation adjustments to expired and closed accounts**. Effective immediately, addressees are authorized to approve individual obligation adjustments to expired accounts up to the full amount delegated by the Assistant Secretary of the Navy (Financial Management and Comptroller) (ASN(FM&C)) which is \$1,000,000 for all appropriations. All obligation adjustments to closed accounts must continue to be forwarded to NAVFACENGCOM Headquarters. This is a significant change from the past where various thresholds applied, depending upon the appropriation and Responsible Office (RO) versus Administering Offices (AO) functional responsibilities. As in the past, however, funds must be available at the activity level in order to approve any obligation adjustments to expired accounts. Obligation adjustments greater than \$1,000,000 will require approval at the ASN(FM&C) level or higher. Enclosure (1) provides a matrix to be used as a quick reference guide. Obligation adjustments greater than \$1,000,000, as well as any obligation adjustments in which funds are not available at your activity, must be submitted in accordance with the format provided by enclosure (2). Such requests must be reviewed and endorsed by the activity comptroller, counsel and contracts personnel.

2. It is important to note that the cumulative threshold of \$4,000,000 within a fiscal year for contract changes will still require approval by the Under Secretary

Enclosure (4)

of Defense (Comptroller). In addition, contract changes with a cumulative value over \$25,000,000 will continue to require notification to the Congress. The cumulative threshold of \$4,000,000 and \$25,000,000 within a fiscal year applies at the "program, project and activity" (PPA) level. PPA controls stem from P.L. 101-508 of 5 November 1990 and are designed to affect "contracted items". For annual accounts, contracted items are individual financial instruments/document level, e.g., contracts or project orders. For the procurement and R&D appropriations, the term PPA applies to the P-1 and R-1 subdivisions of each Program Year's funding, respectively, regardless of the fiscal year of occurrence. For all other accounts, the term PPA is applied as with the annual accounts, at the Program Year/obligating document level. Enclosure (3) is provided as a ready reference as to the available, expired, or canceled status of appropriations specific to the Naval Facilities Engineering Command (NAVFACENGCOM).

3. Previous NAVFACENGCOM correspondence, references (a) through (f), provided fiscal guidance regarding the use of appropriations after the period of availability. In order to provide you with the most current guidance as well as a consolidated policy reference package, the following paragraphs summarize, revise, or cancel all previous guidance provided by references (a) through (f) and are discussed in the order of the references.

(a) CONTRACT CHANGES, CONTRACT ADJUSTMENTS AND PAYMENTS AGAINST CANCELED ACCOUNTS

(1) Contract changes were defined as obligational adjustments that required additional billable work and resulted in additional billable costs. This guidance further stated that all such contract changes must be charged to current appropriations. This guidance reversed previous long standing fiscal policy; but, only for a short period of time. Based on a GAO ruling, **THIS POLICY WAS REVISED BY THE DOD COMPTROLLER IN APRIL 1992. THESE CONTRACT CHANGES ARE TO CONTINUE TO BE CHARGEABLE TO THE APPROPRIATION AND YEAR ORIGINALLY FINANCING THE EFFORTS (Note paragraph (c)).**

(2) Contract adjustments were defined as obligation adjustments that do not involve additional billable work but only additional billable costs such as award fees and economic price adjustments. **THESE CONTRACT ADJUSTMENTS HAVE BEEN AND WILL CONTINUE TO BE CHARGEABLE TO THE APPROPRIATION AND YEAR ORIGINALLY FINANCING THE EFFORTS.**

(3) All current year (active year) funding requests against **canceled (closed) accounts MUST** be forwarded to HEADQUARTERS for approval and are subject to a limitation imposed by law. (This limitation is the lessor of the two; the unexpended balance at cancellation, or 1% of the new

appropriation.) Unique subheads within each appropriation have been created by ASN(FM&C) for such canceled account payment requests.

(4) Additionally, threshold changes related to upward obligation adjustments which were provided by the 25 October 1991 letter are hereby superceded by this letter.

(b) CONTRACT DEFAULTS (TERMINATIONS) RESULTING IN REPROCUREMENT ACTIONS--When a reprocurement action will result in a replacement contract, it may be funded from expired accounts **IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

(1) The activity has a continuing bona-fide need for the goods or services involved; and,

(2) The original contract was made in good faith; and,

(3) The original contract was terminated for default or for the convenience of the Government. If the original contract was terminated for the convenience of the Government, the termination was the result of a:

(a) Court order; or,

(b) Determination by a contracting officer that the contract award was improper when there is explicit evidence that the award was erroneous and when the determination is documented with appropriate findings of fact and of law; or,

(c) Determination by other competent authority, such as General Accounting Office or a Board of Contract Appeals, that the contract was improper.

(4) The reprocurement contract is substantially of the same size and scope as the original contract and executed without undue delay after the original contract terminated.

(c) REVISION TO 25 OCTOBER 1991 LETTER REGARDING ADDITIONAL BILLABLE WORK--This letter forwarded a **MAJOR** policy change from previous guidance. This change was, in effect, a revision back to the original fiscal policy as mentioned in paragraph 3(a)(1). The Department of Defense Comptroller revised previous policy which required the use of current year funds for obligation adjustments that involve additional billable cost and work. **EXPIRED APPROPRIATIONS THAT ARE PROPERLY CHARGEABLE AS WITHIN SCOPE OBLIGATIONAL ADJUSTMENTS AS DEFINED BY GOVERNMENT CONTRACT LAW AND IN ACCORDANCE WITH**

APPROPRIATION LAW MUST BE UTILIZED. The provisions of the Anti-deficiency Act will apply and activities must plan for the possibility of contingent liabilities against expired appropriation accounts.

(d) DISCRETIONARY VERSUS NON-DISCRETIONARY INCREASES OF COST LIMITATION CEILINGS UNDER COST REIMBURSABLE CONTRACTS

(1) All discretionary within-scope contract change orders to COST REIMBURSABLE CONTRACTS which increase the overall funding ceiling must be funded with current year funds. Discretionary versus non-discretionary increases are related to the limitation of costs (LOC) clause in cost reimbursable contracts. This clause establishes an estimated cost or ceiling and requires the contractor to notify the government when the contractor expects to incur costs beyond 85% of the estimated costs.

(2) If the government elects to continue with the task order by increasing the ceiling, this action would normally be considered a change within the scope of the original contract. **BECAUSE OF THE DISCRETIONARY LOC CLAUSE, GAO HAS DETERMINED THAT THE GENERAL RULE OF RELATING BACK DOES NOT APPLY TO COST REIMBURSABLE TYPE CONTRACTS WHEN THE GOVERNMENT ELECTS TO INCREASE THE ESTIMATED COST OF CEILING UNDER THE LOC CLAUSE. CURRENT YEAR FUNDS MUST BE USED.**

(3) An example of a non-discretionary within-scope, would be if the contractor has a legal right to bring claim and suit against the government where we would be forced to pay for the additional work. **NON-DISCRETIONARY INCREASES MUST BE FUNDED FROM THE ORIGINAL FISCAL YEAR'S APPROPRIATION. THIS WOULD BE AN ANTECEDENT LIABILITY ENFORCEABLE BY THE CONTRACTOR.**

(e) USE OF CURRENT YEAR FUNDS WHEN SUFFICIENT OBLIGATIONAL AUTHORITY DOES NOT EXIST IN AN EXPIRED ACCOUNT

(1) Section 1004 of The National Defense Authorization Act for Fiscal Year (FY) 1993 (P.L. 102-484 of 23 October 1992) permits currently available funds to be charged when sufficient obligational authority does not exist in an account whose availability for new obligations expired during the period FY 1986 through FY1991 **WITH CERTAIN RESTRICTIONS.** The amount charged to a current account may not exceed the lesser of 1% of (1) the total amount of the appropriations for that current account; or, (2) 1% of the total amount of the appropriations of the expired account. This 1% limitation applies at the line item subdivision level rather than the appropriation level for those expired appropriations which were line item appropriated. This 1% limitation is in

addition to the 1% limitation on the use of current years funds for the liquidation of closed account charges.

(2) However, any such use of current authority also involves a 30 day advance Congressional notification. All requirements which meet the above criteria **MUST** be forwarded to NAVFACENGCOMHQ for endorsement to FMO who will provide the necessary Congressional notification. These requests should contain, as a minimum, the information requested in enclosure (1).

(3) Another **KEY RESTRICTION**, in addition to the 1% limitations on the accounts mentioned in the first paragraph, is that the need for current funds results from an insufficiency of expired funding and an Anti-deficiency Action violation will result. Therefore, when a request is forwarded to use current year funds when sufficient obligation authority does not exist a violation report must also be submitted.

(f) REQUIREMENTS AND RESTRICTIONS ON THE USE OF "M" ACCOUNT FUNDS--This letter provided requirements and restrictions on the use of "M" account funds. It further established the "two-for-one rule" which meant that a one dollar reobligation required two dollars to be deobligated in order for one of the dollars to be used for reobligation. This policy was a legal requirement through FY 1993. With the demise of the "M" account, this guidance no longer applies and is hereby canceled.

4. As you are aware, appropriation law requires that within scope changes revert back to the account originally funding the initial contract action; normally referred to as antecedent liability. However, there are occasions when a contract change would be within-scope contractually, but not fiscally. Within-scope determinations are based on contract scope governed by the "four corners" of the contract. Contract options and supplemental agreements are not within-scope fiscally, but may be within-scope contractually. Project scope and facility usability are not determining factors; simply because a contract can be change ordered does not imply the change is within-scope fiscally.

(a) Normally, we use expired funds to cover price adjustments, reprocurments and cost overruns. Contract price adjustments are usually pursuant to the "changes" clause and do not represent a new liability. Therefore, these contract price adjustments are usually called within scope contract changes and/or claims. In addition, basic end item cost overruns are funded as if they were price adjustments.

(b) Some specific examples which require the use of expired funds for within-scope adjustments follow; i.e., the within-scope contractually does carry antecedent liability requirements:

(1) Unforeseen conditions such as contaminated soil which has to be removed;

(2) Underestimation of asbestos removal in terms of quantity; i.e. the contract was to remove asbestos with no specific volume;

(3) A family housing fuel line project in Adak, Alaska, did not use Davis-Bacon wage rates. This was appealed to the Department of Labor who decided in favor of the Davis-Bacon rates. This was treated as a claim and funded with expired funds (with NAVCOMPT Counsel concurrence);

(4) Termination costs associated with a contract having a termination clause can be funded with expired funds. We use the same funds that initially awarded the contract even if they are expired at the time of termination;

(5) In repair work there are a significant number of unforeseen conditions especially relating to the location of utilities, termite damage, water damage, asbestos, etc. that are considered within-scope;

(6) Changes in legal statutes/building codes and environmental regulations subsequent to award, but prior to completion are considered within-scope;

(7) When a contingent liability is triggered it should be obligated at that time and charged to the funds that originally awarded the contract. An example of when an unfunded contingent liability might necessitate an obligation would be in our utility contracting area. We have entered into a number of utility contracts which contain unfunded contingent liability costs associated with termination liability provisions in lieu of connection charges. While it is not necessary to record an obligation at the time of award for this unfunded contingent liability, if we were to terminate any of these utility contracts, the termination liability provisions would result in making funds available to support this deficiency.

(c) Executing a modification to a contract would not necessarily determine that expired funds could be used, i.e. the within-scope contractually does not carry antecedent liability requirements.

(1) For example, a fixed price contract was awarded with a definitized modification to clean up 500 cubic yards of dirt citing FY 1995 O&M,N funds. During FY 1996, an additional 200 cubic yards of dirt was required to be cleaned-up and another contract modification was executed; this **WOULD NOT RELATE BACK** to FY 1995 O&M,N funds.

(2) Another example would be where a contract was awarded to install a certain amount of fencing around an installation's airfield perimeter using an appropriation that expired shortly after award. However, during the time of installation, the base commander decided to fence a utility generator located close to the airfield which would require a very small quantity of additional fence materials and a small amount of additional contractor support. The contract was modified, within-scope contractually, but the additional fencing requirement is "above the original scope of work" and therefore would require "new" money.

(d) Determining the appropriate year for MILCON funds and the use of expired funds, is a little more confusing than other appropriations due to the authority to split fund projects prior to project expiration and the fact that projects, as well as appropriations, do indeed expire for new obligations. MILCON with its "unique flexibilities" (split funding) also has its "unique restrictions" (project expirations, appropriation expiration and antecedent liability).

(1) Within-scope contract changes prior to project expiration can be executed with any year funds available for new obligations at the time of the change OR from any year previously cited on the contract (unless the fiscal year appropriation has been closed). This is permitted because of Congressional split funding authority. For example, we are executing an FY 1992 project with a contract awarded in FY 1992 citing FY 1990, FY 1991 and FY 1992 funds. We have a within scope change in FY 1996. Because this is MILCON and split funding rules have been applied, we can introduce any available funds while this project is still active. We could, therefore, fund this within scope change with any funds available for new obligation in FY 1996 (FY 1992 through FY 1996) or with the FY 1990 or FY 1991 funds cited on the contract. However, after project expiration (beginning FY 1997), within-scope contract changes may be funded only from any year previously cited on the contract. No charges may be made to an appropriation which were not cited on the contract prior to project expiration,


(2) Notwithstanding any other provision of law, meritorious contractor claims that arise under military construction contracts or family housing contracts may be paid from any unobligated funds appropriated and available (both active and expired) for military construction or family housing construction, as the case may be.

5. An important point to remember is that if a claim is paid for by the Justice Department (Judgement Account-Treasury) when a U.S. Court decides in favor of a contractor, we are required to reimburse the Treasury using appropriations that were currently available at the time the judgement was actually paid. Once the claim is paid by the judgment account, the issue becomes one of legal reimbursement to that account and it is no longer a claim issue in terms of financing its costs.

6. Normally, if the "within-scope" contract change is of significant value (sometimes referred to as greater than 50% of the original contract award), there could arise a question of "cardinal change". This implies the value has changed in such a manner that the contractor's ability to execute is questionable, and/or scope definition becomes questionable, and/or questions of competition arise. It is recommended that such situations be referred to your legal and contracts departments for clarification and/or resolution.

7. In order to execute within-scope contract changes in a timely fashion, funds' availability becomes a critical concern. In certain appropriations/fiscal years, expired year unobligated balances are negligible; not only at the NAVFACENGCOM Headquarters' level, but also at the DON level. Activities should ensure that all unliquidated obligations are reviewed monthly in order to validate all unpaid obligations. Each of the various levels of contract and program management retains the responsibility of ensuring that all transactions are appropriately concluded, i.e. project completion as well as financial completion (disbursements). The responsibility still exists to ensure that services and materials that remain undelivered at the time of expiration are delivered subsequently, or where such deliveries cannot be made, action is taken to terminate contractual obligations and revert funds. Integrity of the funds must be maintained until such time as all outstanding obligations are liquidated or claims are canceled or liquidated. Financial managers, as well as program managers, are required to actively review uncompleted contracts, unliquidated obligations, incomplete reimbursable orders, and uncollected accounts receivable held at their level to ensure the validity of all obligations.

8. This guidance has been placed on the Tackboard for your easy reference. Enclosure (3) will be updated each fiscal year and placed on the Tackboard. You can access the tackboard via your PC through WAN documentation. Please ensure widest dissemination of this guidance throughout your Comptroller organization, as well as Contracts, Counsel and Program Management organizations. If further clarification of this fiscal policy guidance is needed, our POC is Kathleen M. Cohen, who may be reached at DSN 221-7821 or A.C. 703 325-7821.



J. E. ROARK, JR.
DEPUTY COMPTROLLER